

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :
- v. - : S2 07 Cr. 582 (CM)
NADINE WHITTINGHAM, :
Defendant. :
- - - - - x

GOVERNMENT'S PROPOSED EXAMINATION
OF PROSPECTIVE JURORS

The Government respectfully requests that the Court include the following questions in its examination of prospective jurors pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure. The Court is requested to pursue more detailed questioning if a particular juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the juror in favor of or against either the Government or the defendant.

The Charges And This Particular Case

1. This is a criminal case. The defendant, NADINE WHITTINGHAM, has been charged with the commission of federal crimes in a two-count Indictment filed by a grand jury sitting in this District. The Indictment is not evidence. It simply contains the charge that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. I will

now summarize the charges in this case in order to determine whether there is anything about the nature of the case that may make it difficult or inappropriate for any of you to serve on the jury. The Indictment charges that NADINE WHITTINGHAM, the defendant, conspired with others to commit the crime of bank fraud, by using her position as a personal banker at the Bank of America to access information about a number of customer bank accounts at the Bank of America, and thereafter providing that information to others who then transferred funds between accounts and negotiated fraudulent checks drawn on those accounts, thereby obtaining without authorization funds from the victim accounts at the Bank of America. In addition to charging WHITTINGHAM with conspiring to commit bank fraud, the Indictment also charges her with actually committing that crime in the manner I have just described.

2. Does any juror have any personal knowledge of the charges in the Indictment as I have described them?

3. Does any juror have any views about, or personal experiences with, that type of conduct that would make it difficult for you to sit as a fair and impartial juror?

4. Does any juror feel that he or she could not view fairly and impartially a case involving such charges? Has any juror formed an opinion that the actions charged in the Indictment, as I have described them to you, should not be a

crime?

5. As I mentioned, the Indictment charges that the defendant conspired to commit and committed bank fraud in connection with several customer accounts at the Bank of America. Have you or any members of your family, or any of your close friends, to the best of your knowledge, worked for or had any experience with the Bank of America, that would or could affect your ability to listen to the evidence and render an impartial verdict? Are you related to or acquainted with anyone who is employed by the Bank of America or any other bank?

6. Postal Inspectors with the United States Postal Inspection Service, and Special Agents with the United States Secret Service, participated in the underlying investigation. Have you or any members of your family, or any of your close friends, to the best of your knowledge, had any experience with these agencies or any other federal, state or local law enforcement agency that would or could affect your ability to listen to the evidence and render an impartial verdict?

7. Some of the witnesses who will appear in this case may be law enforcement agents. Does any juror believe that the testimony of law enforcement agents is entitled to any greater or lesser respect than the testimony of any other witness?

8. You will hear testimony in this case from witnesses who were co-conspirators in the crimes the defendant is

alleged to have committed - that is, witnesses who themselves participated in the crimes with which the defendant is charged. The Government's use of a co-conspirator witness is entirely lawful and often is a necessary law enforcement tool. Do any of you believe that it is improper for the Government to rely upon the testimony of an individual who himself or herself admits to having engaged in criminal conduct in the past? Do any of you think you would be unable fairly to weigh the credibility of a person who admitted knowledge of having violated the laws against bank fraud in the past?

Knowledge of the Trial Participants

9. As I mentioned, the defendant in this case is NADINE WHITTINGHAM. Do any of you know, or have any of you had any dealings, directly or indirectly, with the defendant or any relative, friend, or associate of the defendant?

10. To your knowledge, do any of your relatives, friends, associates, or employers know the defendant?

11. NADINE WHITTINGHAM is represented by Michael Hurwitz, Esq. [Please ask Mr. Hurwitz to stand.] Do any of you know Mr. Hurwitz? Have any of you had dealings, either directly or indirectly, with him?

12. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who is Michael J.

Garcia. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Jenna Dabbs and Thomas Brown. They will be assisted by Postal Inspector David Gealey. [Please ask Ms. Dabbs, Mr. Brown and Postal Inspector Gealey to stand.] In addition, they may be assisted by Amy Young of the United States Attorney's Office. Do any of you know Mr. Garcia, Ms. Dabbs, Mr. Brown, Postal Inspector Gealey, or Ms. Young? Have any of you had any dealings, either directly or indirectly, with any of these people?

13. I will now read a list of names of people whose names may be mentioned during the trial, or who may be witnesses in this case. [A list will be supplied prior to jury selection.] Do any of you know any of these people? Have you had any dealings, either directly or indirectly, with any of these people?

Relationship with the Government

14. Do any of you know, or have any association -- professional, business, or social, direct or indirect -- with any member of the staff of the United States Attorney's Office for the Southern District of New York, or the United States Postal Inspection Service? Is any member of your family employed by any law enforcement agency, whether federal, state, or local?

15. Do any of you have any bias, prejudice, or other feelings for or against the United States Attorney's Office or

the United States Postal Inspection Service? Have any of you, either through any experience you have had or through anything you have seen or read, developed any bias or prejudice for or against the United States Attorney's Office or the United States Postal Inspection Service?

16. Have you, or has any member of your family, either as an individual or in the course of business, ever been a party to any legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States, including the Internal Revenue Service? Have any of you had any legal, financial, or other interest in any such legal action or dispute, or in its outcome? In particular, have you, or has any member of your family, ever had a dispute concerning payment of money owed to you by the Government?

Prior Jury Service

17. Have you ever, at any time, served as a member of a grand jury, whether in federal, state, county, or city court? If so, when and where did you serve?

18. Have you ever served as a juror in any court? If so, when, and in what court did you serve? Was it a civil or a criminal case? What was the nature of the case? Did the jury reach a verdict?

Experience as a Witness, Defendant, or Crime Victim

19. Have any of you, or have any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a congressional or state legislative committee, licensing authority, or governmental agency? Have you, or have any of those close to you, ever been questioned in any matter by a federal, state, or local law enforcement agency?

20. Have you ever been a witness or a complainant in any federal or state prosecution?

21. Are you, or is any member of your family, now under subpoena or, to your knowledge, about to be subpoenaed in any criminal case?

22. Have you, or has any member of your family, any associate, or any close friend, ever been charged with a crime? [As to any juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each crime.]

23. Have you, or have any of your relatives, associates, or close friends ever been the subject of any investigation or accusation by any federal or state grand jury, or by any congressional committee? [As to any juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances.]

24. Have you, or have any of your close friends or relatives, ever been a victim of a crime? [As to any juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each crime.]

Other Questions

25. Do any of you have problems with your hearing or vision that would prevent you from giving full attention to all of the evidence at this trial?

26. Are any of you taking any medication that would prevent you from giving full attention to all of the evidence at this trial?

27. Do any of you have any difficulty in reading or understanding English in any degree?

Function of the Court and Jury

28. The function of the jury is to decide questions of fact. You are the sole judge of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finder. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not the defendant is guilty, as charged in the

indictment. Do any of you have any bias or prejudice that might prevent or hinder you from accepting the instructions of law that I will give you in this case?

29. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether the defendant is guilty or innocent?

30. Will each of you accept the proposition that sympathy must not enter into the deliberations of the jurors as to the guilt or innocence of the defendant, and that only the evidence produced here in Court may be used by you to determine the guilt or innocence of the defendant?

31. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Do any of you feel that, even if the evidence established the defendant's guilt beyond a reasonable doubt, you might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

32. Do any of you have any religious, philosophical, or other belief that would make you unable to render a guilty verdict for reasons unrelated to the law or evidence?

33. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, do any of you have the slightest doubt in your mind, for any reason

whatsoever, that you will be able to serve conscientiously, fairly, and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained to you?

Juror's Background

34. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's family status;
- b. the juror's occupation and educational background;
- c. the name and general location of the juror's employer;
- d. the period of employment with that employer;
- e. the same information concerning other employment within the last five years;
- f. the same information with respect to the juror's spouse and any working children;
- g. the area in which the juror lives;
- h. what newspapers and magazines the juror reads, and how often; and
- i. what television programs the juror regularly watches.

Requested Instruction
Following Impaneling of the Jury

35. From this point until the time you retire to deliberate, it is your duty not to discuss this case, and not to remain in the presence of other people who may be discussing this case. The rule about not discussing the case with others

includes discussions even with members of your own family, and with your friends. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk.

36. In this regard, let me explain to you that the attorneys and the defendant in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

37. In this connection, I instruct you that, when the Court is in recess, you should stay either in the jury room or somewhere outside the courtroom. Please do not wait in the courtroom.

Dated: New York, New York
March 31, 2008

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York

By: _____/s/
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